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**FILED**  
**DISTRICT COURT OF GUAM**

AUG 13 2008 R.D.

**JEANNE G. QUINATA**  
**Clerk of Court**

IN THE DISTRICT COURT OF GUAM

8 UNITED STATES OF AMERICA, )

Criminal Case No. 07-00075

9 Plaintiff, )

10 vs. )

DEFENDANT'S PROPOSED

ADDITIONAL JURY INSTRUCTIONS

11 NATHANIEL DIAZ PUNZALAN )

12 Defendant. )

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14  
15 COMES NOW, the Defendant, NATHANIEL PUNZALAN, by and through his  
16 undersigned counsel of record, and hereby submits the following proposed additional  
17 jury instructions in this case.  
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19 The Defendant expressly reserves his right to supplement this submission as  
20 necessary to serve the ends of justice.  
21

22 Respectfully submitted this 13th day of August, 2008.  
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THE LAW OFFICE OF STEPHANIE G. FLORES

24  
25 By: 

Stephanie G. Flores, Esq.  
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## 2.7 TRANSCRIPT OF RECORDING IN ENGLISH

You are about to listen to a tape recording that has been received in evidence. Please listen to it very carefully. Each of you has been given a transcript of the recording to help you identify speakers and as a guide to help you listen to the tape. However, bear in mind that the tape recording is the evidence, not the transcript. If you hear something different from what appears in the transcript, what you heard is controlling. After the tape has been played, the transcript will be taken from you.

### Comment

*See United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998).

The Committee recommends that this instruction be given immediately before a tape recording is played so that the jury is alerted to the fact that what they hear is controlling. It need not be repeated if more than one tape recording is played. However, the judge should remind the jury that the tape recording and not the transcript is the evidence and that they should disregard anything in the transcript that they do not hear. If the instruction is also to be given as part of the closing instructions, it should be modified appropriately.

#### **4.9 TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES— IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

You have heard testimony from Richard Ichihara, a witness who

received benefits and favored treatment from the government in  
connection with this case;

For this reason, in evaluating Richard Ichihara's testimony, you should consider the extent to which or whether Richard Ichihara's testimony may have been influenced by this factor. In addition, you should examine Richard Ichihara's testimony with greater caution than that of other witnesses.

#### **Comment**

The instruction to consider accomplice testimony with "greater caution" is appropriate regardless of whether the accomplice's testimony favors the defense or prosecution. *United States v. Tirouda*, 394 F.3d 683, 687-88 (9th Cir. 2005).